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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| First Named Applicant: Cha |) | Art Unit: 2177 |
| |) | |
| Serial No.: 09/512,949 |) | Examiner: Pannala |
| |) | |
| Filed: February 25, 2000 |) | AM9-99-0217 |
| |) | |
| For: INDEXING SYSTEM AND METHOD FOR |) | July 12, 2006 |
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| |) | |

REPLY BRIEFCommissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

This reply brief responds to the Revised Examiner's Answer dated July 7, 2006.

The Answer maintains that the non-statutory rejection is correct because a "computer program product" is "considered as software" that can be written on a piece of paper and "therefore is not considered as a computer readable medium". But Claim 8 explicitly recites "computer readable code means". It is axiomatic that means-plus-function elements implicate structures disclosed in the specification and structural equivalents thereto. A computer executing a module 14 (figure 1 of the application) that can be on a computer readable medium such as a diskette is disclosed in the third paragraph of the detailed description - but writing code on pieces of paper was not disclosed as being part of the invention. Accordingly, in the context of the claim and the specification that informs the meaning of means-plus-function elements in Claim

1053-83.RPI

CASE NO.: AM9-99-0217
Serial No.: 09/512,949
July 12, 2006
Page 2

PATENT
Filed: February 25, 2000

8, how can a computer program product that contains computer readable code means be considered to be a piece of paper? The examiner's rationale underpinning the ultimate legal conclusion makes no sense.

The obviousness argument about substituting one coordinate transformation reference for another is irrelevant to the issue of a prior art suggestion to alter the primary reference to use polar coordinates. Simply stating that the coordinate conversion principle in a mathematical vacuum is better set forth in the new secondary reference than in the original secondary reference is meaningless to the obviousness inquiry, which requires showing why the prior art suggests a specific modification to a specific reference. Fundamentally, the issue is not whether polar coordinates are known, it is whether the prior art suggests altering the primary reference to use them. For reasons set forth in the Appeal Brief, no evidence has been adduced of any such prior art suggestion apart from the mere existence of polar coordinates in a vacuum, dooming the *prima facie* case.

The Answer also makes an irrelevant and in any case unsupported observation about converting polar coordinates to Cartesian to draw things on computer screens. The present invention, however, is not directed to drawing things on computer screens.

This same irrelevant and unsupported allegation about drawing things on computer screens is the entire support for the rebuttal part (C) and hence will not be further addressed.

Rebuttal part (D) appears to introduce a new standard for enablement, namely, whether a skilled artisan would "understand the invention details even after reading several times" (sic). This is pure legal error, departing from any semblance of known legal principles that apply to enablement. Section 112 does not require anything about "understanding invention details". It requires that a patent specification teach how to make and use an invention. "Undue experimentation" has never been defined in terms of how many times

(053-83.KP1)

CASE NO.: AM9-99-0217
Serial No.: 09/512,949
July 12, 2006
Page 3

PATENT
Filed: February 25, 2000

an examiner thinks a patent specification must be read, or whether it is "confusing to read". Moreover, because an examiner is subjectively confused that the "-" symbol might mean subtraction, and is subjectively enlightened as to its true meaning only after reading the specification "several times", does not equate to an objective showing of undue experimentation.

The specification in fact is clearly written. On page 4, line 6, for example, it is explicitly stated that " $k\text{-NN}^{\text{dis}}(q)$ is the k^{th} largest distance between the query vector q and nearest neighbor vectors p encountered so far." Yet it is the examiner's position that because the dash symbol was used, the skilled artisan would have to unduly experiment to figure out what is meant by " $k\text{-NN}^{\text{dis}}(q)$ ". What the examiner has had to do to arrive at any confusion whatsoever, given the specification's explicit English definition of the term, is to studiously ignore what Appellant has written.


Last, the Supplemental Answer alleges that because "dmin1" is mentioned only once, then "the skilled artisan is burdened with undue experimentation". How many times a variable must be repeated in a patent specification until it sinks in sufficiently to avoid an allegation of undue experimentation, the examiner does not say. Appellant believes that clear and concise patent specifications that avoid unnecessary repetition are actually a good thing.

1053-83.R/P1

CASE NO.: AM9-99-0217
Serial No.: 09/512,949
July 12, 2006
Page 4

PATENT
Filed: February 25, 2000

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1053-83.RP1